

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

KENNETH LYLE FRIES, #16762-078

§

VS.

§

CIVIL ACTION NO. 4:10cv465
CRIMINAL ACTION NO. 4:09cr82

UNITED STATES OF AMERICA

§

ORDER OF DISMISSAL

Movant filed a *pro se* motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. United States Magistrate Judge Amos L. Mazzant issued a Report and Recommendation recommending that Movant be allowed an out-of-time appeal based on Movant's assertion that his attorney failed to file an appeal after Movant requested that he do so. No objections have been timely filed in this matter. The Court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court. It is therefore

ORDERED that Movant be allowed to file an out-of-time appeal and that his motion to vacate, set aside or correct sentence is **DISMISSED** without prejudice. It is also

ORDERED that the Clerk shall reinstate the judgment of conviction in Movant's criminal case on the docket of that cause. The Clerk shall re-enter the original judgment of conviction in the criminal case, as of the date of entry of the final judgment in this § 2255 proceeding. **Movant shall have ten days from the date of reinstatement of the judgment of conviction in which to file a**

notice of appeal or motion under Rule 4(b)(4), Fed. R. App. Pro. Finally, it is

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

So **ORDERED** and **SIGNED** on May 3, 2013.

A handwritten signature in black ink, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, United States District Judge